

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORLANDO ELLISON,

Plaintiff,

No. CIV S-03-1391 FCD JFM P

vs.

DR. NADIM KHOURY, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 21, 2005, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Plaintiff has filed objections to the findings and recommendations and defendant Bhagavan has filed a reply to plaintiff's objections.¹

¹ Plaintiff's objections were due on January 4, 2006. The objections were delivered to prison officials for mailing on January 9, 2006, which is deemed the filing date for said objections, see Houston v. Lack, 487 U.S. 266 (1988), and were served on counsel for defendant

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
2 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire
3 file, the court finds the findings and recommendations to be supported by the record and by
4 proper analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's January 23, 2006 request for extension of time is granted;
- 7 2. Plaintiff's January 11, 2006 objections are deemed timely filed;
- 8 3. The findings and recommendations filed December 21, 2005, are adopted in
9 full;
- 10 4. Defendant Bhagavan's February 23, 2005 motion to set aside entry default is
11 granted;
- 12 5. The Clerk of the Court is directed to set aside the default entered against
13 defendant Bhagavan;
- 14 6. Defendant Bhagavan shall respond to the complaint within ten days from the
15 date of this order; and

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20 Bhagavan on that date. On January 23, 2006, a request for extension of time to file objections,
signed by plaintiff on December 29, 2005, was filed in this action. Good cause appearing, the
request will be granted nunc pro tunc and plaintiff's objections will be deemed timely filed.

21 The court notes that plaintiff's request for extension of time was not served on defendant
22 Bhagavan. Plaintiff is advised that every document submitted to the court for consideration must
be served on defendants. Fed. R. Civ. P. 5. Plaintiff is required to serve all documents in this
23 action conventionally in accordance with the relevant provisions of Fed. R. Civ. P. 5. See Local
Rule 5-135(b). Since an attorney has filed a document with the court on behalf of defendants,
documents submitted by plaintiff must be served on that attorney and not on the defendant. Fed.
24 R. Civ. P. 5(b)(1). Conventional service is usually accomplished by mailing a copy of the
document to the attorney's address of record. See Fed. R. Civ. P. 5(b)(2)(B). Plaintiff must
25 include with every document filed in this action a certificate stating the date an accurate copy of
the document was mailed to defendants's attorney and the address to which it was mailed. See
26 Local Rule 5-135(b) and (c).

7. Plaintiff's March 10, 2005 and May 16, 2005 motions for default judgment are denied.

DATED:February 2, 2006

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL JR.
United States District Judge